

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

Frank Dominic Dundee,

Plaintiff

-vs-

Danielle Lynce, et al.,

Defendant(s)

CASE NO. 1:19CV01141

JUDGE DAN AARON POLSTER

FILED
OCT - 7 2019
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

PLAINTIFF'S REPLY IN OPPOSITION TO DEFENDANT UNIVERSITY HOSPITALS
HEALTH SYSTEMS INC. MOTION FOR JUDGEMENT ON THE PLEADINGS

Once again the Court is presented with the Defense's argument that the plaintiff's charges are time-barred are not based on reality nor the actual documents for EEOC charges 22A-2018-02065 and 533-2017-01275. The Dismissal and Notice of Right to Sue letters were both dated August 13, 2018 and NOT as the Defense argues, July 20, 2018. The Defense is relying on the date of July 20, 2018, that Ms. Mabry mentioned as the date the no reasonable cause decision was rendered in her Notice of Intent to Rescind, dated October 29, 2018. The Plaintiff has no idea as to whether this date was a mistake on Ms. Mabry's part or not. Regardless, the Dismissal and Right to sue letters, sent to the Plaintiff, are dated August 13, 2018, (with said letters attached to this reply); according to EEOC law and the letters, the Plaintiff had 90 days from August 13, 2018, to file a lawsuit for discrimination.

Ninety days from August 13, 2018 is November 11, 2018. The Notice of Intent to Rescind is dated

October 29, 2018, well within the 90 day time limit. The Notice of Intent to Rescind vacated the plaintiff's right to sue as of October 29, 2018, once again, well within the 90 day limit. Therefore, the Defense's argument about the "Continuous Violations Doctrine" is moot.

The Vague Allegations of "Ongoing Harassment" refer to materially adverse actions that are well documented by the Plaintiff and that will be corroborated during discovery. This argument by the Defense is also rendered moot, as well, because the EEOC charges were filed timely on the "latest incident of harassment" which was June 26, 2017. The 300 days in EEOC law refer to timely filing, only. EEOC law allows investigators to look at incidents of harassment that occurred prior to the "latest incident of harassment" with no time limit that imperils the Plaintiff's right to cite any and all harassment and materially adverse actions that are vital to the claim.

It is curious and the Court should take note of the fact that in the FOIA search of all the records for EEOC charges 22A-2018-02065 and 533-2017-01275, that nowhere is a document to be found from University Hospitals' in-house legal department claiming that the Notice to Rescind, was time-barred and the charges were therefore void.

As for the footnote by the Defense that the Brief in Opposition was not timely filed, the Pro Se litigant would ask the Court not to exclude the Brief for timeliness. The Pro Se litigant was under the impression that time limits would be discussed during the Case Management Conference, which was delayed by a motion from the Defense and by a request of the Court. The Plaintiff was not going to file the Brief in Opposition until after the CMC, but decided to get ahead of things and file the brief before the CMC, in the time available to him, since the Plaintiff works full-time as a pharmacist and not as an attorney.

The Plaintiff is including corroborating email correspondences concerning the EEOC audit conducted by Ms. Mabry after the August 13, 2018 Dismissal and Right to Sue; Ms. Mabry's decision to re-open the files for EEOC charges 22A-2018-02065 and 533-2017-01275.

The Plaintiff asks the Court to rule in the only logical way possible, that the Plaintiff's filings were all timely at every step of the process and allow the claim to be heard on its merits. The Plaintiff has submitted a claim, that is not time-barred, against the Defendants, in which relief may be granted as a matter of law, regardless of the arguments put forth by the Defense

Respectfully submitted



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